IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.2180 OF 1995

AMWAY CORPORATION, a Company organised and existing under the appropriate laws of the State of Michigan, United States of America, having its registered office at 7575 Fulton Street East, Ada, Michigan 49355-001, United States of America Outside the said jurisdiction. Plaintiff

And

1. AMWAY Detergents Private Limited, a company incorporated under the provisions of The Companies Act, 1956, having its registered office at C/o. Mrs.Sheila McGready, 7-A, Kelhaven, Off Mia Chotani Road, Pitamber Lane, Mahim, Bombay 400016, within the said jurisdiction.

2. Lt.Col.Harold Clarence Haffernan (Retired) Director of Amway Detergent Private Limited, residing at 10, Castle Crescent, Belrose, NSW2085, Australia outside the said jurisdiction.

3. Mrs.Elizabeth Jill Haffernan, Director, Amway Detergents Private Limited, residing at 10 Castle Crescent, Belrose, NSW 2085, Australia outside the said jurisdiction.

4.(a)Mr.L.C.McGready, son of the Late Sheila McGready, residing at 7A, Kelhaven, Off Mia Chotani Road, Pitamber Lane, Mahim, Mumbai 400016. Defendants

Mr.Amit Jamsandekar i/b.M/s.Gajaria & Co. for the plaintiff.

CORAM : ANOOP V. MOHTA,J.

DATED : 27th June, 2007

ORAL JUDGMENT :

The Plaintiffs have filed the above suit interalia to restrain the Defendants from using the word AMWAY or any other word deceptively similar thereto, as a part of their corporate name or trading style as also for an order and decree, directing Defendant No.1 to change its corporate name so as to delete the word AMWAY therefrom,

and for other reliefs as prayed for in the plaint.

2. The plaintiff is a multinational corporation, organized and existing under the laws of the State of Michigan, United States of America. The Plaintiff is engaged in the business of manufacture and sale of hundreds of products in the field of ome care, personal care, housewares and nutrition. The Plaintiff is also engaged in the business of distributorship of an extensive range of brand name goods through local merchandise catalogues, as also a variety of services and educational products. At the time of filing the present Suit, the Plaintiff had more than 10,000 (Ten Thousand) employees around the world, and carried on its business through a network of more than 2,000,000 distributors dealing with the the goods of the Plaintiff's manufacture and / or merchandise.

3. The Plaintiff has extensive international operations, and has manufacturing bases in several countries of the world including Australia, Austria, Belgium, France, Germany, Hong Kong, Ireland, Italy, Japan, Korea, Malaysia, The Netherlands, New Zealand, Taiwan and United States. In addition to these countries, the Plaintiff also has commercial operations in Brazil, Canada, Guatemala, Hungary, Indonesia, Mexico, Panama, Poland, Portugal, Spain, Switzerland and Thailand. Due to the restrictive economic policies prevailing in India, the Plaintiff could not export its goods to India, but due to the new policies of the Government of India, it became possible for the Plaintiff to have its goods to be made available in India. For the fiscal year ended 31st August, 1992, the Plaintiff had chalked up a sales turnover of US $3.9 billion.

4. The Plaintiff coined and adopted the word AMWAY as its Trade Mark and also corporate name/trading style in the year 1959, and since then the word AMWAY is being used openly, continuously and extensively by the Plaintiff in course of trade as its trade mark and also corporate name throughout the world. The Plaintiff's corporate name/ trading style AMWAY is well known mark in India and worldwide. The Plaintiff's corporate name/

trading style AMWAY is solely and exclusively associated with the Plaintiff and none else. The product bearing the Plaintiff's corporate name/ trading style AMWAY or any services rendered by the Plaintiff are solely and exclusively associated with the Plaintiff. As on the date of the filing of the present suit, the trade mark AMWAY stood registered in favour of the Plaintiff in 72 (seventy two) countries of the world. The word AMWAY also forms the most prominent part of the corporate name of the Plaintiff, and among the consumers all over the world including India, as well as in the trade, the Plaintiff is commonly referred to as AMWAY by the members of the public and the traders.

5. As indicated hereinabove, the Plaintiff's product range encompasses a wide range of goods, most of them being items of everyday use, which include cosmetics, cookware, home environment products, nutritional foods and supplements, services and catalogue merchandise. The Plaintiff maintains very high standard and quality for its products, most of which are sold under the mark AMWAY, and has its own state-of-the-art Research and Development centre at its world head quarter at Michigan, for developing new products as also upgrading its present range of goods. Most of the AMWAY products are custom-formulated to carter to the needs of specific markets and all such products are subjected to stringent

quality testing to ensure safety and efficacy of these items.

6. The Plaintiff has also been pioneer in developing environment-friendly products, and in its home - country that is the United States of America, the Plaintiff was one of the first corporation to make available bio-degradable detergents. The plaintiff specializes in a personalized marketing policy, which spreads better awareness of the Plaintiff's products among its consumers.

7. Apart from being well-known as a commercial organization for its commitment to high standards in its business dealing, the Plaintiff has always been a conscientious corporate person and has sponsored / participated in various meaningful social projects. For instance it sponsored a North Pole expedition termed as ICEWALK in 1989. It has also supported children's welfare project in Malaysia and participated in fund raising activities throughout the world for worthwhile causes. Such efforts of he Plaintiff have been acknowledged by the United Nations, which, in the year 1989 presented the Plaintiff "The United Nations Environment Programme's Award for Achievement. The plaintiff has some copies of write - ups concerning he Plaintiff's involvement in social activities.

8. By virtue of the excellent quality of the goods manufactured and/or sold by the Plaintiff backed up extensive sales promotional efforts, the mark/name AMWAY has become distinctive of the Plaintiff, and the mark/name AMWAY has become exclusively associated with the Plaintiff in the eyes of the consumers all over the world including India and with none other. In fact, the total advertising/sales promotional expenses of the Plaintiff for the mark AMWAY in North America (USA and Canada) from 1989 to 1994 were US $30,100,000. A statement was prepared showing particulars of the advertising/sales promotional expenses in North America (USA and Canada) for the mark AMWAY from 1989 to 1994. This statement was prepared at the time of filing of the present suit on the basis of the record maintained by the Plaintiff.

9. The mark/name AMWAY has always been, and still is well known in India and is associated with the Plaintiff by virtue of, interalia, extensive advertisement campaigns organized by the Plaintiff in various international English language magazines / periodicals like Time, Newsweek, Ebony, LIFE etc. which have a wide circulation in India. The plaintiff has copies of some advertisements the corporate identity of the Plaintiff has been strongly projected. Further, there has been

corporate articles concerning the Plaintiff in daily newspapers like The Telegraph, London, which also has readers in India, along with large number of readers of Indian origin residing in United Kingdom, who have close connection with India. In this respect, there is a copy of one such article published in the Telegraph dated 14th March, 1993. The business turnover of the Plaintiff is large. There is a copy the statement showing the Plaintiff's turnover for the period of 1989 to 1994. This statement was prepared at the time of filing of the present suit on the basis of the record maintained by the Plaintiff.

10. As on the date of filing of the present suit the Plaintiff in order to acquire statutory recognition for its mark AMWAY as also to provide better protection to its mark from piracy the Plaintiff has obtained registration of the Trade Mark AMWAY under the respective trade mark laws of 72 (seventy two) countries. In India, Plaintiff has applied for/ obtained registration of the mark AMWAY used singly or in conjunction with some other word in respect of diverse goods/services falling within classes such as 1, 3, 5, 14, 16, 21 and 25 contained in Schedule Four to the Trade and Merchandise Marks Act, 1958. The plaintiff has a list of the AMWAY trade mark(s) in the name of the plaintiff along with relevant extracts from

the Trade Marks Journal pertaining to the advertisement and/or renewal/registration notification in respect of the registered marks.

11. Sometime in the year 1988, the Plaintiff for the first time came to learn of the existence of the Defendant No.1 when it came across an advertisement of the application for the registration of the mark AMWAY in Devanagiri script and a star device being application number 439168 B in class 01 advertised in the Trade Marks Journal No. 941 dated 16th August, 1988. The Plaintiff immediately thereafter conducted investigation into the affairs of the said company that is the Defendant No. 1 and discovered that the company was formed by Defendant Nos. 2, 3 and Late Sheila McGready among others in 1985 without the authority or consent of the Plaintiff to use the word AMWAY as the key portion of the Defendant no.1's corporate name. On further investigation, it transpired that the defendant nos. 2 and 3 were distributors of the Plaintiff in Australia and as such they had full knowledge of the Plaintiff's mark/name as also the world wide reputation attached to it. The distributorship of the defendant nos. 2 and 3 was terminated the was terminated by the Plaintiff subsequently in 1991. Defendant No.3 and Late Sheila Mc Gready were at all material times active associates of the Defendant No.2 in his illegal action and were adding

and abetting the use of the plaintiff's corporate name/trading style..

12. In view of the fact that at that point of time Defendant No. 1 had no commercial activity and further the impugned application indicated the mark only as proposed to be used, the Plaintiff instructed its Trade Mark Attorneys, D. P. Ahuja & co. to take necessary steps to oppose registration of the impugned mark. Accordingly, a Notice Of Opposition was filed by the Plaintiff to the said Application. There is a copy of the said Notice of Opposition and the connected Affidavit being Evidence in Support of Opposition. The said opposition was numbered BOM-7245.

13. Thereafter, the Plaintiff came across three other Applications filed by Defendant No. 1, particulars of which are given hereunder :

Trade Mark	Application no.	Class
AMWAY and Device of Star	438452	01
AMWAY and Device of Star	438453	03
AMWAY in Devenagiri Script and Device of Star.	439169	03

All the aforesaid applications were in respect of detergents and soaps which the plaintiff deals in. It

is apparent that the entire exercise of the Defendants in this respect was to commence the process of usurping the Plaintiff's marks with a view to trade on the goodwill and reputation of the Plaintiff's mark AMWAY. The Plaintiff, through its Trade Mark Attorneys opposed the registration of all the said Applications and Defendant No. 1 did not succeed in obtaining registration of any of the said Applications. Application No. 438452, 438453 and 439169 were treated a abandoned by the Registrar of Trade Marks while Application No. 439168B was refused by the Registrar of Trade Marks. There are copies of the above orders of the Registrar of Trade Marks.

14. At the time of filing of the suit the Plaintiff had, interalia, six Applications pending with the Registrar of Trade Marks for the mark AMWAY in classes 1, 3, 5, 16, 21 and 25 of the Fourth Schedule of the Trade and Merchandise Mark Rules, 1959 being Application numbers 518183 filed on 11th October, 1989, 491351 filed on 20th May, 1988, 527069 filed on 29th March, 1990, 527070 filed on 29th March, 1990, 527071 filed on 29th March 1990 and 527072 filed on 29th March, 1990 respectively. Subsequently, Application No. 527072 filed on 29th March, 1990 in class 25 was advertised in Journal No. 1067 at Page 905 on 16th November, 1993, no Opposition was filed in respect of the said Application.

There are the copies of the abovementioned six Applications for the Mark AMWAY and the advertisement of Application No. 527072 in Journal No.1067. Since, then marks under no.518183, 491351, 527070, 527071 and 527072 have proceeded to registration and are valid and subsisting on the Register of Trade Marks, documents supporting the same forming a part of Exhibit D.

15. The Plaintiff, upon succeeding before the Registrar of Trade Mark in resisting the Application of Defendant No.1 for registration of the impugned marks, had started taking steps for commencing its commercial operations in India, and expecting that since Defendant No.1 had not taken any step for running of the company registered illegally and had abandoned three of its applications, as also the Defendants had accepted the decision and order of the Registrar refusing the application No 439168B by not filing any appeal against such order, good sense had prevailed upon the Defendants, and accordingly on 17th February, 1994 wrote to Defendant No.2 requesting winding up of Defendant no.1.

16. On 18th March, 1994, however, the Plaintiff was surprised to receive a letter from Defendant No.2 dated 11th March, 1994, wherein it was incorrectly alleged that the said Defendant had formed the company with knowledge of certain officers of the Plaintiff. In the

said letter, it was also alleged that Defendant no.2 had met the solicitor of the Plaintiff and he had suggested that the said Defendant ought to quote a figure as compensation for winding up of Defendant no.1.In the said letter, the Defendant also demanded a sum of US $ 20,000/- for liquidating the said company, which was a clear case of extortion.

17. Defendant no.1 has not commenced any business operation inspite of its incorporation in 1985. The Plaintiff is further aware that none of the statutory forms and statements, defendant no.1 is required to furnish under the provisions of The Companies Act, 1956 have been furnished by it after 1988.

18. The promoters of Defendant no.1, had full knowledge of the Plaintiff's existence and reputation of the Plaintiff, and they had registered the Defendant no.1 in its present name only to trade on the goodwill of the Plaintiff. The said defendants were mis-using their said registration/incorporation by making excessive demands for money. From the conduct of the Defendants it is evident that they had no interest in conducting any business and wish to extort money from the Plaintiff by threatening to pass of their company as that of the Plaintiff.

19. In the circumstances aforesaid, the Plaintiff is exclusively entitled to use the mark Amway. The same forms an essential part of the Plaintiff's corporate name. The same is associated by the traders and members of the Public exclusively with the Plaintiff. The Defendants have fraudulently adopted the word "Amway" as part of the corporate name of Defendant No.1. The Promoters were aware of the Plaintiff's name and reputation of the Plaintiff's mark Amway. The Registrar of Trade Marks has held that the adoption of the mark by the 1st Defendant was not honest. In view of the aforesaid correspondence, the Plaintiff apprehended that the Defendants and/or any person or company claiming through or under them will commence business just to harass the Plaintiff and to extort more money from the Plaintiff. The Plaintiff also apprehends that the Defendants may negotiate for sale of the so called business of Defendant no.1 as a going concern. The Plaintiff has entered into Indian market. If the Defendants are allowed to use the word Amway as part of the corporate name of trading style of Defendant No.1, irreparable harm will be caused to the Plaintiff. The name of Defendant no.1 is identical and/or deceptively similar to the Plaintiff's name and mark. The Plaintiff apprehends that if Defendant no.1 uses its corporate name in respect of their business, there will be deception and confusion and/or likelihood of confusion

and/or association.

20. After the suit was filed, the Plaintiff took out a Notice of Motion being Notice of Motion No. 2747 of 1995 in the above suit. Pursuant to the Notice of motion, an ad-interim order dated 5th October, 1995 came to be passed by His Lordship Mr. Justice N. D. Vyas, whereby the Defendants were interalia restrained by an order and injunction from using the word "AMWAY" or any deceptively similar word as part of their corporate name or style. Despite being served no one appeared for the Defendants at the hearing of the ad-interim application.

21. Thereafter the Notice of Motion came up for final hearing when by an Order dated 5th November, 1997, passed by His Lordship Mr. Justice S.S. Nijjar, the said Notice of Motion No. 2747 of 1995 was made absolute and the order dated 5th October, 1995 was confirmed. Even at this stage no one appeared for the Defendants.

22. During the pendency of the suit, the Plaintiff has learnt from the Written Statements filed by Defendants Nos. 4 and 4 (a), that Defendant nos.2 and 4 have expired and Defendant no.3 is a permanent resident of Australia and is not concerned with Defendant No. 1 Company any longer. The said Written statement of

Defendant No. 4 (a) also discloses that Defendant No. 4 (a) is also not concerned with Defendant No. 1 company. Defendant Nos. 4 and 4 (a) in their Written statements have also mentioned that that Defendant no. 1 company has not carried on any business since incorporation and that it is a defunct company. They have also mentioned that the directors of Defendant No. 1 Company had written to the Registrar of Companies to treat Defendant No. 1 a defunct company and to strike its name from the Register of Companies but the same has not been done to date.

23. In the circumstances, the Plaintiffs submitted that it would not proceed against defendant no. 4(a) and is willing to drop the suit against him with liberty to file a fresh suit if the Defendant No. 4(a) and/or any person claiming through or under him starts using the mark AMWAY or any other mark which is similar to the mark AMWAY in any manner, directly or indirectly. .

24. Defendant No.1 has not filed any Written Statement nor has it filed its appearance through any advocate to date despite being served. In fact, Defendant No.1 had never appeared nor was it ever represented in court at any time despite service. The Directors themselves have written to the Registrar of Companies to strike off the name of Defendant No. 1 Company from the Register as it

was a defunct company which had not carried on any business since incorporation.

25. The plaintiffs have filed an affidavit of evidence and related copies of the documents on record.

26. These averments have remained uncontroverted including the contents of those documents referred therein. All the interim orders also remained unchallenged. In view of this, I am inclined to grant decree in terms of prayer clauses (a), (b) and (g) based upon the existing material, affidavit and documents on record. The fact that suit remained undefended for all the purposes and the interim order has been in operation since 1995 also an additional factor.

27. In the result, the Suit is decreed with liberty in terms of prayers (a), (b) and (g) which read thus:

> (a) that the Defendants by themselves their servants and agents be restrained by a perpetual order and injunction of this Hon'ble Court from using the word Amway or any other deceptively similar word as part of the corporate name or trading style of Defendant No.1 so as to pass off or enable others to pass off the 1st Defendants' business as that of the plaintiff or in any way connected with the plaintiff and/or to derive benefit of the word AMWAY in any manner whatsoever.
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> (b) that the Defendants be ordered and decreed by a mandatory order to change the corporate

name and/or trading style of Defendant No.1 so as to delete therefrom the word Amway.

(g) for the costs of the suit.

(ANOOP V. MOHTA,J.)